



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 16, 2022

IN THE MATTER OF:

Appeal Board No. 624808

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective September 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed July 8, 2022 (), the Administrative Law Judge granted the employer's application to reopen A.L.J. Case No. 022-08024 and overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant has worked as a paraprofessional for students with behavioral issues for the employer, a municipal school district, for over five years. She became a permanent paraprofessional as of February 2020. The claimant is asthmatic but had not yet been vaccinated as of the hearing date.

The claimant worked in-person, providing one-on-one support to a special-needs' student, until the buildings closed due to the pandemic in March 2020 and the employer shifted to virtual learning for all students and employees. At that same time, the claimant relocated to Texas to live with her

mother. At some point, the claimant contracted COVID-19, was hospitalized, and has suffered lung issues thereafter.

The school district afforded the claimant a medical exemption from in-person work for the September 2020- August 2021, academic year. The claimant worked remotely from Texas through the last day of school in August 2021, when her assignment ended. On August 24, 2021, the school district notified all employees that in-person work will resume on September 10, 2021, for the 2021-2022 school year, and that all employees were required to be vaccinated against COVID-19.

The claimant did not want to resume in-person employment for fear of contracting COVID-19 again. She preferred to work remotely from Texas. The claimant did not request a medical exemption from the employer to continue her remote work. Instead, the claimant resigned via email on September 9, 2021, indicating "I am relocated, so that is the reason for my not being able to continue my profession with the DOE." Continuing work was available had the claimant not resigned.

OPINION: The credible evidence establishes that the claimant resigned on September 9, 2021, in lieu of resuming her in-person employment as a paraprofessional in New York. Although the claimant contends that she resigned because she was denied remote work, the claimant's letter of resignation makes no mention of a denial of remote opportunities; instead, the claimant concedes she resigned because she had "relocated".

For the 2020-2021 school year, we note that the claimant had requested, and the school district had granted a medical exemption from in-person work due to her concern about contracting COVID-19. Yet, the claimant neglected to request a medical exemption for the 2021-2022 academic year. There is no evidence that such exemptions for medical reasons were precluded. At hearing, the employer's witness offered that the employer would have considered a medical exemption for the claimant if she had requested an exemption, but the claimant had resigned before requesting an exemption from in-person employment. There is also no evidence that the employer intended to immediately discharge the claimant, much less that the claimant's continued employment was topic of discussion prior to her resignation.

Hence, we conclude that the claimant resigned on September 9, 2021, in anticipation of a potential discharge that may or may not have come to pass.

We have long held, however, that a resignation in anticipation of a potential discharge fails to serve as good cause to excuse a separation. Accordingly, we conclude that the claimant voluntarily left her employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER